

Amendment No. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2196

House Bill No. 2263*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 37-10-304(c)(2), is amended by deleting the subdivision.

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 15, Part 2, is amended by adding the following as new sections:

39-15-214.

(a) Findings. The general assembly finds:

(1) As the Supreme Court has stated in *Planned Parenthood v. Casey*, 505 U.S. 833, 852 (1992), "Abortion is a unique act" and is "fraught with consequences...for the woman who must live with the implications of her decision." As the Supreme Court stated in *Gonzales v. Carhart*, 550 U.S. 124, 159 (2007) "it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained. Severe depression and loss of esteem can follow." The Supreme Court has acknowledged, in *Casey* at 882, that the effect of an abortion on the life of the unborn child is "relevant, if not dispositive" information for the patient's decision;

(2) Current standards of medical care mandate the performance of an ultrasound prior to the performance of inducing of an abortion. Determining accurate information regarding gestational development is important for purposes of informed consent, as well as making essential preparation for the procedure itself;



0710155701



015853

(3) In this state ultrasounds are regularly provided to women seeking an abortion to determine if they are eligible for a medication abortion, and to review other factors related that cannot be determined prior to an examination of the patient;

(4) In the forty-seven (47) years since the United States Supreme Court's ruling in Roe v. Wade, 410 U.S. 113 (1973), there have been substantial advances in scientific methods and medical technology that have significantly expanded knowledge and understanding of prenatal life and development, and the effects of abortion on the physical and psychological health of women;

(5) At conception, a new and genetically distinct human being is formed;

(6) The state has a legitimate, substantial, and compelling interest in protecting the rights of all human beings, including the fundamental and absolute right of unborn human beings to life, liberty, and all rights protected by the Fourteenth and Ninth Amendments to the United States Constitution;

(7) The presence of a fetal heartbeat is medically significant because the heartbeat is a discernible sign of life at every stage of human existence;

(8) An unborn child's heart begins to beat at five (5) weeks gestational age, and blood begins to flow during the sixth week;

(9) Depending on what type of equipment is utilized, an unborn child's heartbeat can be detected as early as six (6) to eight (8) weeks gestational age;

(10) An unborn child's heartbeat can consistently be made audible using a handheld Doppler fetal heart rate device by twelve (12) weeks gestational age;

(11) A pregnancy can be confirmed through the detection of the unborn child's heartbeat;

(12) By the beginning of the second trimester, physicians view the absence of a fetal heartbeat as an instance of fetal death;

(13) It is standard medical practice to monitor an unborn child's heartbeat throughout pregnancy and labor to measure the heart rate and rhythm of the unborn

child, which averages between one hundred ten (110) and one hundred sixty (160) beats per minute. This monitoring is used as an indicator of the health of the unborn child;

(14) Since the Supreme Court's decision in Roe v. Wade, medical professionals have expanded their understanding of life in utero to include, among other indicia, the presence of a heartbeat, brain development, a viable pregnancy or viable intrauterine pregnancy during the first trimester of pregnancy, and the ability to experience pain;

(15) The presence of a fetal heartbeat is the best indicator of a viable pregnancy. The detectability of a fetal heartbeat is a strong predictor of survivability to term, especially if the heartbeat is present at eight (8) weeks gestational age or later;

(16) When a fetal heartbeat is detected between eight (8) and twelve (12) weeks gestational age, the rate of miscarriage is extremely low, with approximately ninety eight percent (98%) of naturally conceived pregnancies carrying to term;

(17) At eight (8) weeks gestational age, an unborn child begins to show spontaneous movements, and reflexive responses to touch. The majority of an unborn child's body is responsive to touch by fourteen (14) weeks gestational age;

(18) Peripheral cutaneous sensory receptors, which are the receptors that feel pain, develop in an unborn child at around seven (7) to eight (8) weeks gestational age. Sensory receptors develop in the palmar regions during the tenth week of gestational age, growing throughout the unborn child's body by sixteen (16) weeks gestational age;

(19) An unborn child's nervous system is established by six (6) weeks gestational age. At this stage, the basic patterning of the early nervous system is in place and is the basis for tremendous growth and increased complexity built upon this basic pattern. The earliest neurons of the cortical brain, responsible for thinking, memory, and higher level functions, are established by the fourth week;

(20) Synapses are formed in the seventh week, and the neural connections for the most primitive responses to pain are in place by ten (10) weeks gestation;

(21) Substance P, a peptide functioning as a neurotransmitter in the transmission of pain, is present in the spinal cord of an unborn child at eight (8) weeks gestational age, while enkephalin peptides, which serve as neurotransmitters in pain modulation, are present at twelve (12) to fourteen (14) weeks gestational age;

(22) There is significant evidence, based on peer-reviewed scientific studies, that unborn children are capable of experiencing pain by no later than twenty (20) weeks gestational age. Pain receptor nerves are already present throughout the human body by twenty (20) weeks gestation, and the cortex, which begins development at eight (8) weeks, has a full complement of neurons at twenty (20) weeks;

(23) There is evidence that an unborn child is capable of feeling pain as early as twelve (12) to fifteen (15) weeks gestational age. The scientific evidence shows that significant cortical neuronal connections are in place by ten (10) to twelve (12) weeks gestation, and that connections between the spinal court and thalamus are nearly complete by twenty (20) weeks gestation;

(24) A growing body of medical evidence and literature supports the conclusion that an unborn child may feel pain from around eleven (11) to twelve (12) weeks gestational age, or even as early as five and a half (5 ½) weeks. At only eight (8) weeks gestation, an unborn child exhibits reflexive movement during invasive procedures resulting from spinal reflex neuro pathways, showing that the unborn child reacts to noxious stimuli with avoidance reactions and stress responses. By sixteen (16) weeks gestational age, pain transmission from a peripheral receptor to the cortex is possible. Significant evidence also shows hormonal stress responses by unborn children as early as eighteen (18) weeks;

(25) Mothers considering abortion express concern over the medical information on fetal neurological development and an unborn child's ability to feel pain while in utero, and providing this information to mothers who are considering abortion is an important

part of empowering mothers to make a fully-informed choice on whether or not to seek an abortion;

(26) Medical evidence shows that younger infants are hypersensitive to pain. Neuronal mechanisms that inhibit or moderate pain sensations do not begin to develop until thirty-four (34) to thirty-six (36) weeks gestation and are not complete until a significant time after birth. Newborn and preterm infants are hyperresponsive to pain compared to adults or older infants;

(27) The recognition of fetal pain has led to improvements and changes in how physicians approach fetal surgery and fetal anesthesia. The presence of neural connections and the ability to feel pain as early as the fifteenth week now necessitate treating the unborn child as a separate patient from the mother for purposes of utilizing direct analgesia to fetal patients, who clearly elicit stress responses to pain;

(28) Fetal surgeons at specialized units in St. Louis, Nashville, Cincinnati, Kansas City, Boston, and elsewhere, in response to their recognition of fetal pain, routinely use anesthesia and analgesia for unborn and premature infants undergoing surgery as young as eighteen (18) weeks gestation;

(29) The leading textbook on clinical anesthesia recognizes the significant body of evidence indicating the importance of mitigating fetal stress responses to pain stimuli. It is presumed that an unborn child's ability to fully experience pain occurs between twenty (20) and thirty (30) weeks, and that the fetal experience of pain may be even greater than that of term neonate or young children due to the immaturity of neurodevelopment that helps inhibit pain;

(30) Mothers considering abortion express concern over the medical information on fetal neurological development and an unborn child's ability to feel pain while in utero;

(31) The infliction of unnecessary pain upon a living being is generally prohibited by state and federal law. The legislature has prohibited the unnecessary infliction of pain

on living beings in a variety of circumstances in an effort to protect the innocent from harm;

(32) The life of an unborn child is recognized and protected from violence by federal law and by the laws of most states. The killing of an unborn child is considered homicide in thirty-eight (38) states, with at least twenty-eight (28) of those states criminalizing the act from conception. Nearly every state and the District of Columbia have wrongful death statutes that allow for liability and recovery for the death of an unborn child or subsequent death of an infant who is born and later dies because of injuries caused while in utero;

(33) The United States Supreme Court created the viability standard for evaluating abortion-related laws and regulations in *Roe v. Wade*, 410 U.S. 113 (1973), and reaffirmed this approach in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992);

(34) At the time *Roe v. Wade* was decided, the court recognized that viability was not likely until approximately twenty-eight (28) weeks gestational age;

(35) Since the Supreme Court's decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, advances in science, technology, and treatment methods have resulted in children surviving and thriving at younger preterm ages than ever before;

(36) In recent years, scientific advances and advances in neonatal care of lowered the gestational limits of survivability well into the second trimester;

(37) The age at which a preterm infant can survive has decreased from twenty-eight (28) weeks to less than twenty-two (22) weeks. Survival of preterm infants has increased significantly over time assuming physicians provide active care for the young infants, lowering the age of survival from twenty-eight (28) weeks to twenty-four (24) weeks. Moreover, infants born as early as twenty-two (22) weeks can survive with the provision of care and treatment. The youngest preterm infant to survive was born at only twenty-one (21) weeks and four (4) days;

(38) In 1978, the first infants weighing less than seven hundred fifty (750) grams were successfully ventilated;

(39) By the 1990s, survival of infants born weighing between five hundred (500) and seven hundred (700) grams, roughly between twenty-four (24) to twenty-six (26) weeks, became possible;

(40) Technological developments in the 1980s and 1990s, such as improved tracheal instillation of surfactant for respiratory distress syndrome and antenatal corticosteroids, resulted in survival of infants born between twenty-three (23) to twenty-four (24) weeks;

(41) In recent years, resuscitation and survival of infants born weighing less than four hundred (400) grams, or approximately twenty-two (22) to twenty-three (23) weeks gestational age, has further decreased the age of viability;

(42) The provision of active prenatal and postnatal care has significantly increased the number of prematurely born children who survive until hospital discharge;

(43) Abortions performed at any gestational age pose a risk to the mother. Abortion increases the risks of subsequent preterm birth and placenta previa, life-threatening hemorrhage, postpartum hemorrhage, and cesarean delivery;

(44) Abortions performed later in pregnancy pose an even higher medical risk to the health and life of women, with the relative risk increasing exponentially at later gestational ages after eight (8) weeks gestational age;

(45) The relative risk of death for pregnant women who had an abortion performed or induced upon her at eleven (11) to twelve (12) weeks gestational age is between three (3) and four (4) times higher than an abortion at eight (8) weeks gestational age or earlier;

(46) The relative risk of death for pregnant women who had an abortion performed or induced upon her at thirteen (13) to fifteen (15) weeks gestational age is

almost fifteen (15) times higher than an abortion at eight (8) weeks gestational age or earlier;

(47) The relative risk of death for pregnant women who had an abortion performed or induced upon her at sixteen (16) to twenty (20) weeks gestational age is almost thirty (30) times higher than an abortion at eight (8) weeks gestational age or earlier;

(48) The relative risk of death for pregnant women who had an abortion performed or induced upon her at twenty-one (21) weeks gestational age or later is more than seventy-five (75) times higher than an abortion at eight (8) weeks gestational age or earlier;

(49) Women who have an abortion suffer from post-traumatic stress disorder at a rate slightly higher than veterans of the Vietnam war. Women who have an abortion have an eighty one percent (81%) increased risk of mental trauma after an abortion. Abortion has been shown to correlate with many other mental health disorders as well;

(50) The United States is one of only seven (7) countries in the world that permits elective abortion past twenty (20) weeks;

(51) Only seventeen (17) countries permit abortion without any restriction beyond week twelve (12) weeks gestational age;

(52) The United States is an outlier within the international community related to the regulation of abortion. Of the countries that permit elective abortion, nine (9) limit elective abortion before the twelfth week of gestation, thirty-six (36) limit elective abortion at twelve (12) weeks gestation, six (6) limit elective abortion between twelve (12) and twenty (20) weeks gestation, and only seven (7) permit elective abortion past twenty (20) weeks or have no gestational limit;

(53) The historical development of abortion is undeniably tied to bias and discrimination by some organizations, leaders, and policies towards impoverished and minority communities, including the imposition of forced sterilization of the intellectually

disabled, poor, minority, and immigrant women. These historic policies should be rejected and left on the ash heap of history;

(54) As Justice Clarence Thomas wrote in his opinion concurring in the denial of certiorari in *Box v. Planned Parenthood of Indiana and Kentucky, Inc.*, 139 S. Ct. 1780, 1783 (2019), "the use of abortion to achieve eugenic goals is not merely hypothetical." This historical practice of abortion was rooted not in equality but in discrimination based on age, sex, and disability;

(55) In the early twentieth century, the eugenics movement had grown popular across elite institutions in the United States, with many distinguishing between so-called fit and unfit individuals along racial lines and expressing concern over the increased birth-rate among non-white populations. Such abhorrent distinctions were also made between able-bodied persons and persons eugenicists referred to as "feeble-minded," "deformed," "diseased," blind, deaf, or "dependent," a term used to include orphans and the poor. Laws were adopted prohibiting marriages between the disabled and other "unfit" individuals and requiring their sterilization. More than sixty thousand (60,000) people were involuntarily sterilized between 1907 and 1983;

(56) Planned Parenthood founder Margaret Sanger argued in the early twentieth century that birth control would open the way to the eugenicist. Sanger argued that birth control could be used to reduce the "ever increasing, unceasingly spawning class of human beings who never should have been born at all;

(57) This argument was later adopted by abortion advocates, such as Planned Parenthood President Alan Guttmacher, who endorsed abortion for eugenic purposes. Guttmacher argued in the 1950's that abortion should be used to prevent the birth of disabled children. Legal scholar Glanville Williams, whose book was cited in the majority opinion in *Roe v. Wade*, argued in a book published in the 1950's that a "eugenic killing by a mother . . . cannot confidently be pronounced immoral;

(58) Some continue to support the goal of reducing undesirable populations through selective reproduction;

(59) Today, the individualized nature of abortion creates a significant risk that prenatal screening tests and new technologies will be used to eliminate children with unwanted characteristics;

(60) There is substantial evidence from across the globe and in the United States that the elimination of children with unwanted characteristics is already occurring. The abortion rate for children diagnosed with Down syndrome in utero approaches one hundred percent (100%) in Iceland, ninety eight percent (98%) in Denmark, ninety percent (90%) in the United Kingdom, and seventy seven percent (77%) in France. Even in the United States, the abortion rate for children with Down Syndrome is sixty seven percent (67%). Widespread sex-selective abortions in Asia have led to as many as one hundred sixty (160) million "missing" women. In India, as a result of the abortion of 300,000-700,000 female unborn children each year over several decades, there are currently about fifty (50) million more men than women in the country. Recent evidence also suggests that sex-selective abortions of girls are common among certain populations in the United States;

(61) Sex-selective abortion results in an unnatural sex ratio imbalance that can impede members of the numerically predominant sex from finding partners, encourage the commoditization of humans in the form of human trafficking, and create other societal harms. Sex-selective abortion also reinforces discriminatory and sexist stereotypes toward women by devaluing and dehumanizing females;

(62) In this state, from 2008 through 2017, the rate of abortion per one thousand (1,000) women was nearly four (4) times higher for nonwhite women than white women, with a rate of 7.6 on average for all women, 4.6 for white women, and 16.0 for nonwhite women. The ratio of abortions to one thousand (1,000) live births in this state from 2008-

2017 was nearly three (3) times higher for nonwhite women than white women, with an average of 138.2 for all women, 85.1 for white women, and 294.4 for nonwhite women;

(63) The use of abortion as a means to prefer one (1) sex over another or to discriminate based on disability or race is antithetical to the core values equality, freedom, and human dignity enshrined in both the United States and Tennessee Constitutions. The elimination of bias and discrimination against pregnant women, their partners, and their family members, including unborn children, is a fundamental obligation of government in order to guarantee those who are, according to the Declaration of Independence, "endowed by their Creator with certain unalienable Rights" can enjoy "Life, Liberty, and the pursuit of Happiness";

(64) This state has historically protected its interest in preserving the integrity of the medical profession by enacting a comprehensive statutory framework for ensuring the integrity of the medical profession in title 63;

(65) The general assembly first adopted an act creating the Board of Medical Examiners in 1901, with the mission to protect the health, safety, and welfare of the people of this state and to ensure the highest degree of professional conduct;

(66) As the Supreme Court of the United States acknowledged in *Gonzales v. Carhart*, 550 U.S. 124, 157 (2007) (citing *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997)), "the government has an interest in protecting the integrity and ethics of the medical profession." Under U.S. Supreme Court precedents, it is clear the State has a significant role to play in regulating the medical profession;

(67) Physician involvement in medical practices that cause fetal pain has been rejected by the international community;

(68) Physician involvement in medical practices that facilitate discrimination is antithetical to the United States and Tennessee constitutions' affirmation of equal protection under the law;

(69) The integrity and public respect of the medical profession are significantly harmed by physician involvement in practices that have been rejected by the international community, facilitate discrimination, or otherwise create a disdain for life;

(70) This state has a legitimate, substantial, and compelling interest in valuing and protecting unborn children;

(71) This state has a legitimate, substantial, and compelling interest in protecting the physical and mental health of the mother;

(72) This state has a legitimate, substantial, and compelling interest in promoting human dignity;

(73) This state has a legitimate, substantial, and compelling interest in encouraging childbirth over abortion;

(74) This state has a legitimate, substantial, and compelling interest in safeguarding an unborn child from the serious harm of pain by an abortion method that would cause the unborn child to experience pain;

(75) This state has a legitimate, substantial, and compelling interest in resolving untenable inconsistencies and incongruities in state law which permits some unborn children to be killed by abortion, while requiring that unborn children be protected and valued in non-abortion circumstances including, but not limited to, criminal provisions related to the infliction of harms against persons, state programs intended to aid prenatal healthcare, and state sponsored healthcare for unborn children;

(76) This state has a legitimate, substantial, and compelling interest in protecting the integrity and ethics of the medical profession, including by prohibiting medical practices that might cause the medical profession to become insensitive, even disdainful, to life, including the life of the unborn child; and

(77) This state has a legitimate, substantial, and compelling interest in preventing discrimination.

(b) Purpose.

(1) The purpose of this section is to provide legislative intent and reasoning underlying the enactment of laws to protect maternal health, and to preserve, promote, and protect life and potential life throughout pregnancy, including, but not limited to, §§ 39-15-215-- 39-15-217.

(2) The unique nature of abortion and its potential physical and mental health risks, as well as the ultimate result of the death of an unborn child, necessitates that this state ensure every woman considering an abortion is provided with adequate comprehensive information before deciding to obtain an abortion. The mandatory provision of an ultrasound prior to the abortion substantially furthers this compelling state interest.

(3) The presence of a fetal heartbeat is a medically significant indicator of life and the potential successful development of an unborn child. This state's legitimate, substantial, and compelling interest in protecting unborn children warrants the restriction of abortion in cases where the heartbeat is detectable.

(4) The unnecessary infliction of pain upon the life of an unborn child is inconsistent with Tennessee law that would otherwise protect the life and health of an unborn child, undermines the integrity of and public trust in the medical profession, and conflicts with the this state's legitimate, substantial, and compelling interest in protecting the life of an unborn child, protecting the integrity of the medical profession, resolving the conflict in state laws intended to protect the health of the unborn child, and protecting the life, physical health, and mental health of women. Therefore, it is necessary to enact protections against the infliction of pain, and death, upon an unborn child who is capable of experiencing pain.

(5) Advances in science and medical practice have decreased the gestational age of an unborn child's viability to survive. This state's legitimate, substantial, and compelling interest in protecting the life of an unborn child, protecting the integrity of the medical profession, resolving the conflict in state laws intended to protect the health of

the unborn child, and protecting the life, physical health, and mental health of women require the enactment of a series of gestational age restrictions on the provision of an abortion.

(6) The historical use of abortion as a means to discriminatory ends is fundamentally objectionable and conflicts with this state's legitimate, substantial, and compelling interest in preventing discrimination and discriminatory practices. Therefore, it is necessary for this state to enact protections that prevent sex, racial, and disability discrimination against unborn children.

(7) Life begins at conception, and nothing in this act shall be interpreted or construed to suggest that it is the intent or purpose of the legislature to condone abortion of an unborn child at any time after conception. The legislature specifically acknowledges the provisions of § 39-15-213 that will prohibit all abortion effective on the thirtieth day after issuance of a judgment overruling, in whole or in part, *Roe v. Wade*, as modified by *Planned Parenthood v. Casey*, or adoption of an amendment to the Constitution, restoring state authority to prohibit abortion.

39-15-215.

(a) As used in this section:

(1) "Abortion" has the same meaning as defined in § 39-15-211;

(2) "Auscultate" means to examine by listening for sounds made by internal organs of the fetus, including a fetal heartbeat, in accordance with standard medical practice utilizing current medical technology and methodology;

(3) "Gestational age" or "gestation" has the same meaning as defined in § 39-15-211;

(4) "Medical emergency" has the same meaning as defined in § 39-15-211; provided, that a medical emergency does not include a claim or diagnosis related to the woman's mental health or a claim or diagnosis that the woman will

engage in conduct which would result in her death or substantial and irreversible impairment of a major bodily function;

(5) "Obstetric ultrasound" or "ultrasound" means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor a developing fetus; and

(6) "Ultrasound technician" means a person at least eighteen (18) years of age who:

(A) Has earned a technical certificate from a sonography program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or Canadian Medical Association (CMA);

(B) Is currently certified by the American Registry for Diagnostic Medical Sonography (ARDMS) in the specialty in which the person is currently practicing;

(C) Is currently certified by the American Registry of Radiologic Technologists (ARRT) in sonography;

(D) Is in the process of applying for registration with the ARDMS, provided that the applicant satisfies the requirements for registration within ninety (90) days of becoming employed as a sonographer; or

(E) Is in the process of applying for registration with the ARRT, provided that the applicant satisfies the requirements for registration within ninety (90) days of becoming employed as a sonographer.

(b) Prior to a pregnant woman giving informed consent to having an abortion, as required by § 39-15-202, the physician who is performing or inducing, or attempting to perform or induce, an abortion, shall:

(1) Determine the gestational age of the unborn child in accordance with generally accepted standards of medical practice;

(2) Inform the pregnant woman the gestational age of the unborn child;

(3) Perform an obstetric ultrasound in accordance with generally accepted standards of medical practice using current medical technology and methodology applicable to the gestational age of the unborn child and reasonably calculated to determine whether a fetal heartbeat exists;

(4) Auscultate the fetal heartbeat of the unborn child, if any, so that the pregnant woman may hear the heartbeat if the heartbeat is audible;

(5) Provide a simultaneous explanation of what the ultrasound is depicting, which must include the presence and location of the unborn child within the uterus, the dimensions of the unborn child, the presence of external members and internal organs if present and viewable, the number of unborn children depicted, and, if the ultrasound image indicates that fetal demise has occurred, inform the woman of that fact;

(6) Display the ultrasound images so that the pregnant woman may view the images;

(7) Record in the pregnant woman's medical record the presence or absence of a fetal heartbeat, the method used to test for the fetal heartbeat, the date and time of the test, and the estimated gestational age of the unborn child; and

(8) Obtain from the pregnant woman prior to performing or inducing, or attempting to perform or induce, an abortion, a signed certification that the pregnant woman was presented with the information required to be provided under this subsection (b), that the pregnant woman viewed the ultrasound images or declined to do so, and that the pregnant woman listened to the heartbeat if the heartbeat was audible or declined to do so. The signed certification must be in addition to any other documentation requirements under this part and must be on a form prescribed by the commissioner of health and be retained in the woman's medical record.

(c)

(1) The physician who is to perform or induce, or attempt to perform or induce, an abortion may delegate the responsibility to perform the obstetric ultrasound to an ultrasound technician, provided that the ultrasound technician is qualified and permitted by law to perform an obstetric ultrasound that complies with the requirements of subsection (b). An ultrasound technician performing an obstetric ultrasound under this subdivision (c)(1) shall perform the obstetric ultrasound in a manner that complies with subsection (b), and the physician may rely on the signed certification obtained by the qualified technician under subdivision (b)(8) to establish that an ultrasound was performed in compliance with this section, unless the physician knows, or in the exercise of reasonable care should know, that an ultrasound was not performed in accordance with this section.

(2) The physician who is to perform or induce, or attempt to perform or induce, an abortion may accept a certification from a referring physician that the referring physician has performed an obstetric ultrasound that complies with the requirements of subsection (b). The referring physician performing an obstetric ultrasound under this subdivision (c)(2) shall perform the obstetric ultrasound in a manner that complies with subsection (b), and the physician may rely on the signed certification obtained by the referring physician under subdivision (b)(8) to establish that an ultrasound was performed in compliance with this section, unless the physician knows, or in the exercise of reasonable care should know, that an ultrasound was not performed in accordance with this section.

(d) When the ultrasound images and heartbeat sounds are provided to and reviewed with the pregnant woman, this section shall not be construed to prevent the pregnant woman from averting her eyes from the ultrasound images or requesting the volume of the heartbeat be reduced or turned off if the heartbeat is audible. The

physician or ultrasound technician performing the ultrasound shall be permitted to comply with the request of the pregnant woman. The physician, the ultrasound technician, and the pregnant woman shall not be subject to any penalty if the pregnant woman refuses to look at the displayed ultrasound images or to listen to the heartbeat if the heartbeat is audible.

(e)

(1) Subject to compliance with subdivision (e)(2), it is an affirmative defense to criminal prosecution for a violation of a provision of this section that, in the physician's reasonable medical judgment, a medical emergency prevented compliance with the provision.

(2) In order for the affirmative defense in subdivision (e)(1) to apply, a physician who performs or induces, or attempts to perform or induce, an abortion because of a medical emergency must comply with each of the following conditions unless the medical emergency also prevents compliance with the condition:

(A) The physician who performs or induces, or attempts to perform or induce, the abortion certifies in writing that, in the physician's good faith, reasonable medical judgment, based upon the facts known to the physician at the time, compliance with the provision was prevented by a medical emergency;

(B) The physician certifies in writing the available methods or techniques considered and the reasons for choosing the method or technique employed;

(C) If the unborn child is presumed to be viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician performs or induces, or attempts to perform or induce, the abortion in a hospital. The hospital must have appropriate neonatal services for premature

infants unless there is no hospital within thirty (30) miles with neonatal services and the physician who intends to perform or induce the abortion has admitting privileges at the hospital where the abortion is to be performed or induced;

(D) If the unborn child is presumed viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician who performs or induces, or attempts to perform or induce, the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn child to survive, unless that physician determines, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, that the termination of the pregnancy in that manner poses a significantly greater risk of the death of the pregnant woman or a significantly greater risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman than would other available methods of abortion; and

(E) If the unborn child is presumed viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician who performs or induces, or attempts to perform or induce, the abortion has arranged for the attendance in the same room in which the abortion is to be performed or induced, or attempted to be performed or induced, at least one (1) other physician who is to take control of, provide immediate medical care for, and take all reasonable steps necessary to preserve the life and health of the unborn child immediately upon the child's complete expulsion or extraction from the pregnant woman.

(f) Performing or inducing, or attempting to perform or induce, an abortion in violation of the requirements of this section is a Class C felony.

(g) A violation of subsection (c) by an ultrasound technician or referring physician whose performance of an ultrasound pursuant to subsection (c) is relied upon by a physician in performing or inducing, or attempting to perform or induce, an abortion is a Class E felony.

(h) A pregnant woman upon whom an abortion is performed or induced, or attempted to be performed or induced, in violation of this section is not guilty of violating this section or attempting to commit or conspiring to commit a violation of this section.

(i) When a physician is criminally charged with a violation of this section, the physician shall report the charge to the board of medical examiners in writing within seven (7) calendar days of acquiring knowledge of the charge. The report must include the jurisdiction in which the charge is pending, if known, and must also be accompanied by a copy of the charging documents, if available. A district attorney general shall promptly notify the board of medical examiners when a physician is charged with a violation of this section.

(j) If any provision or provisions of this section or the application thereof to any person, circumstance, or period of gestational age is found to be unenforceable, unconstitutional, or invalid by a court of competent jurisdiction, the same is hereby declared to be severable and the remainder of the section shall remain effective. The general assembly hereby declares that it would have enacted this section and each of its provisions, even if any provision of this section or the application thereof to any person, circumstance, or period of gestational age is later found to be unenforceable, unconstitutional, or invalid.

(k)

(1) It is the specific intent of the general assembly in this section to exercise to the greatest extent permitted by law the legitimate, substantial, and compelling state interest in protecting maternal health, and in preserving, promoting, and protecting life and potential life throughout pregnancy by enacting

more protective requirements than provided for under this part as it existed prior to the effective date of this act.

(2) When this section is in direct conflict with this part as it existed prior to the effective date of this act, the more protective requirements of this section control over any less protective provision in this part. This section shall not be construed as a repeal, either express or implied, of any provision of this part as it existed prior to the effective date of this act.

(3) The general assembly specifically intends that this part as it existed prior to the effective date of this act shall remain and be enforceable if, and for so long as, any provisions of this section, or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

(4) This section does not repeal or modify in any way § 39-15-213, as enacted by Public Chapter 351 of 2019, which shall control upon becoming effective. This section shall remain and be enforceable if, and for so long as, any provisions of § 39-15-213, or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

39-15-216.

(a) As used in this section:

(1) "Abortion" has the same meaning as defined in § 39-15-211;

(2) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the heart of an unborn child;

(3) "Gestational age" or "gestation" has the same meaning as defined in § 39-15-211;

(4) "Medical emergency" has the same meaning as defined in § 39-15-211; provided, that a medical emergency does not include a claim or diagnosis related to the woman's mental health or a claim or diagnosis that the woman will

engage in conduct which would result in her death or substantial and irreversible impairment of a major bodily function;

(5) "Unborn child" has the same meaning as defined in § 39-15-211; and

(6) "Viable" has the same meaning as defined in § 39-15-211.

(b)

(1) Before performing or inducing, or attempting to perform or induce, an abortion, the physician shall determine the gestational age of the unborn child in accordance with generally accepted standards of medical practice.

(2) A violation of subdivision (b)(1) is a Class C felony.

(c)

(1) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child has a fetal heartbeat. A violation of this subdivision (c)(1) is a Class C felony.

(2) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is six (6) weeks gestational age or older unless, prior to performing or inducing the abortion, or attempting to perform or induce the abortion, the physician affirmatively determines and records in the pregnant woman's medical record that, in the physician's good faith medical judgment, the unborn child does not have a fetal heartbeat at the time of the abortion. In making the good faith medical determination, the physician shall utilize generally accepted standards of medical practice using current medical technology and methodology applicable to the gestational age of the unborn child and reasonably calculated to determine the existence or non-existence of a fetal heartbeat. A violation of this subdivision (c)(2) is a Class C felony.

(3) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is eight (8) weeks gestational age or older. A violation of this subdivision (c)(3) is a Class C felony.

(4) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is ten (10) weeks gestational age or older. A violation of this subdivision (c)(4) is a Class C felony.

(5) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twelve (12) weeks gestational age or older. A violation of this subdivision (c)(5) is a Class C felony.

(6) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is fifteen (15) weeks gestational age or older. A violation of this subdivision (c)(6) is a Class C felony.

(7) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is eighteen (18) weeks gestational age or order. A violation of this subdivision (c)(7) is a Class C felony.

(8) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty (20) weeks gestational age or older. A violation of this subdivision (c)(8) is a Class C felony.

(9) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-one (21) weeks gestational age or older. A violation of this subdivision (c)(9) is a Class C felony.

(10) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-two (22) weeks gestational age or older. A violation of this subdivision (c)(10) is a Class C felony.

(11) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-three (23) weeks gestational age or older. A violation of this subdivision (c)(11) is a Class C felony.

(12) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-four (24) weeks gestational age or older. A violation of this subdivision (c)(12) is a Class C felony.

(d)

(1) A person shall not be convicted of violating more than one (1) subdivision of subsection (c) for any one (1) abortion that the person performed, induced, or attempted to perform or induce.

(2) This section does not permit the abortion of a viable unborn child.

(e)

(1) Subject to compliance with subdivision (e)(2), it is an affirmative defense to criminal prosecution for a violation of a provision of this section that, in the physician's reasonable medical judgment, a medical emergency prevented compliance with the provision.

(2) In order for the affirmative defense in subdivision (e)(1) to apply, a physician who performs or induces, or attempts to perform or induce, an abortion because of a medical emergency must comply with each of the following conditions unless the medical emergency also prevents compliance with the condition:

(A) The physician who performs or induces, or attempts to perform or induce, the abortion certifies in writing that, in the physician's good faith, reasonable medical judgment, based upon the facts known to

the physician at the time, compliance with the provision was prevented by a medical emergency;

(B) The physician certifies in writing the available methods or techniques considered and the reasons for choosing the method or technique employed;

(C) If the unborn child is presumed to be viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician performs or induces, or attempts to perform or induce, the abortion in a hospital. The hospital must have appropriate neonatal services for premature infants unless there is no hospital within thirty (30) miles with neonatal services and the physician who intends to perform or induce the abortion has admitting privileges at the hospital where the abortion is to be performed or induced;

(D) If the unborn child is presumed viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician who performs or induces, or attempts to perform or induce, the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn child to survive, unless that physician determines, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, that the termination of the pregnancy in that manner poses a significantly greater risk of the death of the pregnant woman or a significantly greater risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman than would other available methods of abortion; and

(E) If the unborn child is presumed viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician who performs or induces, or attempts to perform or induce, the abortion has arranged

for the attendance in the same room in which the abortion is to be performed or induced, or attempted to be performed or induced, at least one (1) other physician who is to take control of, provide immediate medical care for, and take all reasonable steps necessary to preserve the life and health of the unborn child immediately upon the child's complete expulsion or extraction from the pregnant woman.

(f) A pregnant woman upon whom an abortion is performed or induced, or attempted to be performed or induced, in violation of any provision of this section is not guilty of violating, or of attempting to commit or conspiring to commit a violation of, this section.

(g) When a physician is criminally charged with a violation of this section, the physician shall report the charge to the board of medical examiners in writing within seven (7) calendar days of acquiring knowledge of the charge. The report must include the jurisdiction in which the charge is pending, if known, and must also be accompanied by a copy of the charging documents, if available. A district attorney general shall promptly notify the board of medical examiners when a physician is charged with a violation of this section.

(h) If any provision or provisions of this section or the application thereof to any person, circumstance, or period of gestational age is found to be unenforceable, unconstitutional, or invalid by a court of competent jurisdiction, the same is hereby declared to be severable and the remainder of the section shall remain effective. The general assembly hereby declares that it would have enacted this section and each of its provisions, even if any provision of this section or the application thereof to any person, circumstance, or period of gestational age was later found to be unenforceable, unconstitutional, or invalid.

(i)

(1) It is the specific intent of the general assembly in this section to exercise to the greatest extent permitted by law the legitimate, substantial, and compelling state interest in protecting maternal health, and in preserving, promoting, and protecting life and potential life throughout pregnancy by enacting more protective requirements than provided for under this part as it existed prior to the effective date of this act.

(2) When this section is in direct conflict with this part as it existed prior to the effective date of this act, the more protective requirements of this section control over any less protective provision of this part. This section shall not be construed as a repeal, either express or implied, of any provision of this part as it existed prior to the effective date of this act.

(3) The general assembly specifically intends that this part as it existed prior to the effective date of this act shall remain and be enforceable if, and for so long as, any provisions of this section, or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

(4) This section does not repeal or modify in any way § 39-15-213, as enacted by Public Chapter 351 of 2019, which shall control upon becoming effective. This section shall remain and be enforceable if, and for so long as, any provisions of § 39-15-213, or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

39-15-217.

(a) As used in this section:

(1) "Abortion" has the same meaning as defined in § 39-15-211;

(2) "Down syndrome" means a chromosome disorder associated either with an extra chromosome twenty-one or an effective trisomy for chromosome twenty-one;

(3) "Medical emergency" has the same meaning as defined in § 39-15-211; provided, that it does not include a claim or diagnosis related to the woman's mental health or a claim or diagnosis that the woman will engage in conduct which would result in her death or substantial and irreversible impairment of a major bodily function; and

(4) "Unborn child" has the same meaning as defined in § 39-15-211.

(b) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman if the person knows that the woman is seeking the abortion because of the sex of the unborn child.

(c) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman if the person knows that the woman is seeking the abortion because of the race of the unborn child.

(d) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman if the person knows that the woman is seeking the abortion because of a prenatal diagnosis, test, or screening indicating Down syndrome or the potential for Down syndrome in the unborn child.

(e)

(1) Subject to compliance with subdivision (e)(2), it is an affirmative defense to criminal prosecution for a violation of a provision of this section that, in the physician's reasonable medical judgment, a medical emergency prevented compliance with the provision.

(2) In order for the affirmative defense in subdivision (e)(1) to apply, a physician who performs or induces, or attempts to perform or induce, an abortion because of a medical emergency must comply with each of the following conditions unless the medical emergency also prevents compliance with the condition:

(A) The physician who performs or induces, or attempts to perform or induce, the abortion certifies in writing that, in the physician's good faith, reasonable medical judgment, based upon the facts known to the physician at the time, compliance with the provision was prevented by a medical emergency;

(B) The physician certifies in writing the available methods or techniques considered and the reasons for choosing the method or technique employed;

(C) If the unborn child is presumed to be viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician performs or induces, or attempts to perform or induce, the abortion in a hospital. The hospital must have appropriate neonatal services for premature infants unless there is no hospital within thirty (30) miles with neonatal services and the physician who intends to perform or induce the abortion has admitting privileges at the hospital where the abortion is to be performed or induced;

(D) If the unborn child is presumed viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician who performs or induces, or attempts to perform or induce, the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn child to survive, unless that physician determines, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, that the termination of the pregnancy in that manner poses a significantly greater risk of the death of the pregnant woman or a significantly greater risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman than would other available methods of abortion; and

(E) If the unborn child is presumed viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician who performs or induces, or attempts to perform or induce, the abortion has arranged for the attendance in the same room in which the abortion is to be performed or induced, or attempted to be performed or induced, at least one (1) other physician who is to take control of, provide immediate medical care for, and take all reasonable steps necessary to preserve the life and health of the unborn child immediately upon the child's complete expulsion or extraction from the pregnant woman.

(f) A violation of subsections (b)-(d) is a Class C felony.

(g) A pregnant woman upon whom an abortion is performed or induced, or attempted to be performed or induced, in violation of subsections (b)-(d), is not guilty of violating the subsections, or of attempting to commit or conspiring to commit a violation of the subsections.

(h) When a physician is criminally charged with a violation of this section, the physician shall report the charge to the board of medical examiners in writing within seven (7) calendar days of acquiring knowledge of the charge. The report must include the jurisdiction in which the charge is pending, if known, and must also be accompanied by a copy of the charging documents, if available. A district attorney general shall promptly notify the board of medical examiners when a physician is charged with a violation of this section.

(i) If any provision of this section or the application thereof to any person, circumstance, or period of gestational age is found to be unenforceable, unconstitutional, or invalid by a court of competent jurisdiction, the same is hereby declared to be severable and the remainder of this section shall remain effective. The general assembly hereby declares that it would have enacted this section and each of its provisions, even if any provision of this section or the application thereof to any person,

circumstance, or period of gestational age was later found to be unenforceable, unconstitutional, or invalid.

(j)

(1) It is the specific intent of the general assembly in this section to exercise to the greatest extent permitted by law the legitimate, substantial, and compelling state interest in protecting maternal health, and in preserving, promoting, and protecting life and potential life throughout pregnancy by enacting more protective requirements than provided for under this part as it existed prior to the effective date of this act.

(2) When this section is in direct conflict with this part as it existed prior to the effective date of this act, the more protective requirements of this section control over any less protective provision in this part. This section shall not be construed as a repeal, either express or implied, of any provision of this part as it existed prior to the effective date of this act.

(3) The general assembly specifically intends that this part as it existed prior to the effective date of this act shall remain and be enforceable if, and for so long as, any provisions of this section, or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

(4) This section does not repeal or modify in any way § 39-15-213, as enacted by Public Chapter 351 of 2019, which shall control upon becoming effective. This section shall remain and be enforceable if, and for so long as, any provisions of § 39-15-213, or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

Amendment No. _____

Signature of Sponsor

AMEND Senate Bill No. 2777

House Bill No. 2689*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and substituting instead the following language:

SECTION 1. Tennessee Code Annotated, Section 71-3-503(a)(6)(A), is amended by deleting the language:

with no child attending more than two (2) days in each calendar week for not more than six (6) hours each day

and substituting instead the following:

with no child attending more than twelve (12) hours in each calendar week

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 3, Part 5, is amended by adding the following as a new section:

71-3-519.

(a) In order to increase the number of licensed child care agencies providing affordable, high-quality child care in the state, the department is authorized, notwithstanding any other provisions contained in this part, to permit department-registered "family child care homes" or "group child care homes", as defined in § 71-3-501, to provide care for children prior to licensure.

(b) Upon registration with the department as either a registered family child care home or registered group child care home and verification that a provider meets the health and safety requirements under the federal Child Care and Development Block Grant Act (42 U.S.C. § 9857 et seq.) and federal Child Care Development Fund regulations at 45 C.F.R. §§ 98.41 and 98.43, the department shall permit registered



0440391705



016883

family or group home providers to care for children for no more than a total of twelve (12) months within a period of eighteen (18) months during the licensure process.

(c) In order to continue to provide care for children in excess of the licensing threshold upon expiration of the twelve (12) months of registration, a child care provider must be approved for licensure by the department as either a family child care home or group child care home.

SECTION 3. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2020, the public welfare requiring it.

Amendment No. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1273

House Bill No. 88*

by deleting all language after the enacting clause and substituting the following:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 3, Part 12, is amended by deleting the part and substituting the following:

71-3-1201. Part definitions.

As used in this part:

(1) "Caretaker relative" means the father, mother, grandfather or grandmother of any degree, brother or sister of the whole or half-blood, stepfather, stepmother, stepbrother, stepsister, aunt or uncle of any degree, first cousin, nephew or niece, the relatives by adoption within the previously named classes of persons, and the biological relatives within the previous degrees of relationship, and the legal spouses of persons within the previously named classes of persons, even if the marriage has been terminated by death or divorce, with whom a child is living;

(2) "Chain-of-custody" means the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results;

(3) "Drug" means marijuana; cocaine; methamphetamine; amphetamine; opiates, such as morphine; and any drug added by the commissioner of human services by rule;



0541424043



006654

(4) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered by a drug testing agency authorized to do so pursuant to this part, for the purpose of determining the presence or absence of a drug or its metabolites pursuant to regulations adopted by rule by the commissioner of human services;

(5) "Drug testing agency" means an entity that has the required credentials as established by regulatory or certification authorities to administer tests using a person's urine, blood, specimen, or DNA that will detect and validate the presence of drugs in the person's body;

(6) "Drug treatment program" means a service provider that provides confidential, timely, and expert identification, assessment, and resolution of drug or alcohol abuse problems affecting persons;

(7) "Legal guardian" means a person or entity that has the legal authority to provide for the care, supervision, or control of a minor child as established by law or court order;

(8) "Protective payee" means a caretaker relative or a legal guardian of the child. "Protective payee" does not mean a caretaker relative or guardian who is the applicant for TANF benefits and who tests positive for the use of a drug; and

(9) "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of drugs or drug metabolites.

71-3-1202. Drug testing of applicants for TANF.

(a) Dependent children under eighteen (18) years of age are exempt from the drug testing requirement pursuant to this part. However, any minor parent who is an applicant for temporary assistance for needy families (TANF) benefits who does not live with a parent, legal guardian, or other adult caretaker relative must comply with the drug testing requirements of this part.

(b) The department of human services shall administer a screening questionnaire to applicants for TANF benefits consisting of the following questions, and applicants are required to complete the screening questionnaire under penalty of perjury:

- (1) Have you ever used drugs other than over-the-counter or those prescribed for medical reasons by a licensed doctor?
- (2) Have you ever been charged with drug possession or sale?
- (3) Have you ever had blackouts or flashbacks as a result of drug use?
- (4) Have you ever felt bad or guilty about your drug use?
- (5) Has your spouse, significant other, parent(s), child(ren), family members, or friends ever complained about your involvement with illegal drugs?
- (6) Have you ever neglected your family because of your use of illegal drugs?
- (7) Have you ever lost custody of your child(ren) based on allegations of illegal drug use or drug abuse?
- (8) Have you ever engaged in illegal activities in order to obtain illegal drugs?
- (9) Have you ever experienced withdrawal symptoms (felt sick) when you stopped taking drugs?
- (10) Have you ever had medical problems as a result of your illegal drug use (ex: blackouts, memory loss, hepatitis, convulsions, bleeding, etc.)?
- (11) Have you ever injected illegal drugs?
- (12) Have you ever missed, been late for work, or lost a job because of illegal drug use?
- (13) Have you ever used, during the past five (5) years, any of the following drugs: methamphetamine, speed, crystal, ice, crack, cocaine, marijuana, heroin, oxycodone, oxymorphone, hydrocodone, hydromorphone, morphine, fentanyl, methadone, suboxone, inhalants (paint thinner, aerosol, or

glue), hallucinogens, LSD, PCP, ecstasy, mushrooms, muscle relaxers, or tranquilizers (valium)?

(14) Have you ever taken an expired prescription drug?

(15) Have you ever taken a prescription drug not prescribed to you?

(c) If an applicant answers yes to any of the screening questions set forth in subsection (b), then the department shall require the applicant to undergo a seven-panel hair follicle test to be conducted by a drug testing agency designated by the department.

(d) City, county, or state law enforcement agencies that charge an individual with a drug-related offense or a theft or burglary offense shall report the individual to the department no later than thirty (30) days after the charge, providing information that includes the individual's name; date of birth; social security number, if available; and address. If the individual is a recipient of TANF benefits, then the department shall require the individual to undergo a seven-panel hair follicle test to be conducted by a drug testing agency designated by the department.

(e) The applicant may inform the drug testing agency administering the test of any prescription or over-the-counter medication the person is taking. No drug for which an applicant has a current valid prescription is a basis for denial of TANF benefits pursuant to this part.

(f) The cost of drug testing is the responsibility of the person tested and may be deducted from the applicant's TANF benefits.

(g) If an applicant refuses to complete the screening questionnaire set forth in subsection (b) or refuses to submit to a drug test required by this section, then the applicant is ineligible to receive TANF benefits until the applicant fulfills those requirements.

(h) If an applicant tests positive for a drug, then the department shall refer the applicant to an appropriate drug treatment program. Upon proof of entry and participation in a drug treatment program, the applicant, if otherwise eligible, shall

receive TANF benefits during the treatment period, but, in no event, longer than six (6) months following the positive drug test. During the six-month period, the applicant shall furnish the department with documentary proof of ongoing participation in and compliance with the drug treatment program.

(i) Refusal by an applicant who tests positive for a drug to enter a drug treatment program, or failure to complete the drug treatment program, results in the applicant being ineligible for TANF benefits for six (6) months following the positive drug test.

(j) At the conclusion of the treatment period, but, in no event, longer than six (6) months, the department shall test the applicant again using a seven-panel hair follicle test. If the applicant tests positive for the use of a drug, then the applicant is ineligible for TANF benefits for a six-month disqualification period.

(k) If an applicant tests positive for a drug in a subsequent drug test after the six-month disqualification period, then the applicant is ineligible to receive TANF benefits for one (1) year from the date of the positive drug test.

(l) Upon testing positive for a drug in a drug test conducted pursuant to this section, an applicant must submit to a seven-panel hair follicle test upon reapplication or recertification for TANF benefits, but, at a minimum of once per year in order to continue receiving TANF benefits.

(m) If a caretaker relative is deemed ineligible for TANF benefits as a result of failing a drug test conducted pursuant to this section, then the dependent child's eligibility for TANF benefits is not affected, and the department shall designate an appropriate protective payee to receive TANF benefits on behalf of the child who is under sixteen (16) years of age. In such event, a dependent child who is sixteen (16) years of age or older shall receive the benefits directly as the payee.

(n) If an applicant makes a false statement or provides a false answer or information in response to the screening questionnaire set forth in subsection (b), then the applicant has committed perjury under § 39-16-702.

71-3-1203. Confidentiality.

(a) All information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received by the department as part of the drug testing program established by this part are confidential, are not subject to disclosure, and must not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the administration of this part or in proceedings conducted pursuant to title 37 concerning the protection or permanency of children or in adjudicating any claims or actions arising from the administration of this part, unless the person tested provides written consent permitting disclosure.

(b) Information regarding drug test results for tests administered pursuant to this part must not be released to law enforcement authorities or used in any criminal proceeding against the applicant. Information released contrary to this section is inadmissible as evidence in a criminal proceeding.

(c) This section does not prohibit the department or a drug testing agency conducting a drug test from having access to an adult applicant's drug test information or using the information when consulting with legal counsel in connection with actions brought under or related to this section, or when the information is relevant to its defense in a civil or administrative matter.

(d) This section does not prohibit the reporting of child abuse, child sexual abuse, or neglect of a child pursuant to title 37, chapter 1, part 4 or 6.

71-3-1204. Rules.

(a) The commissioner of human services is authorized to adopt rules, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, necessary for the administration of this part, and has rulemaking authority to promulgate any rules to carry out the requirements of any title or part of any title that the department administers and that are necessary to immediately implement this part or related titles or parts.

(b) In promulgating rules, the commissioner shall consider, at a minimum:

(1) Testing procedures established by the United States departments of health and human services and transportation;

(2) Body specimens and minimum specimen amounts that are appropriate for drug testing;

(3) Methods of analysis and procedures to ensure reliable drug testing results;

(4) Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens tested; and

(5) Retention, storage, and transportation procedures to ensure reliable results of drug tests used in the administration of this part.

71-3-1205. Confirmed positive drug test does not deem applicant handicapped or disabled.

An applicant whose drug test result is confirmed as positive in accordance with this part does not, because of that result alone, have a disability as defined under federal, state, or local disability discrimination laws.

71-3-1206. Applicability to extent permitted by federal law or waiver; severability.

This part applies to the extent permitted by federal law or waiver. If any provision of this part or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of this part that can be given effect without the invalid provision or application, and to that end the provisions of this part are severable.

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 5, Part 3, is amended by adding the following language as a new section:

(a) Dependent children under eighteen (18) years of age are exempt from the drug testing requirement pursuant to this section. However, any minor parent who is an applicant for assistance under this part who does not live with a parent, legal guardian,

or other adult caretaker relative must comply with the drug testing requirements of this section.

(b) The department shall administer a screening questionnaire to applicants for assistance under this part consisting of the following questions, and applicants are required to complete the screening questionnaire under penalty of perjury:

- (1) Have you ever used drugs other than over-the-counter or those prescribed for medical reasons by a licensed doctor?
- (2) Have you ever been charged with drug possession or sale?
- (3) Have you ever had blackouts or flashbacks as a result of drug use?
- (4) Have you ever felt bad or guilty about your drug use?
- (5) Has your spouse, significant other, parent(s), child(ren), family members, or friends ever complained about your involvement with illegal drugs?
- (6) Have you ever neglected your family because of your use of illegal drugs?
- (7) Have you ever lost custody of your child(ren) based on allegations of illegal drug use or drug abuse?
- (8) Have you ever engaged in illegal activities in order to obtain illegal drugs?
- (9) Have you ever experienced withdrawal symptoms (felt sick) when you stopped taking drugs?
- (10) Have you ever had medical problems as a result of your illegal drug use (ex: blackouts, memory loss, hepatitis, convulsions, bleeding, etc.)?
- (11) Have you ever injected illegal drugs?
- (12) Have you ever missed, been late for work, or lost a job because of illegal drug use?
- (13) Have you ever used, during the past five (5) years, any of the following drugs: methamphetamine, speed, crystal, ice, crack, cocaine,

marijuana, heroin, oxycodone, oxymorphone, hydrocodone, hydromorphone, morphine, fentanyl, methadone, suboxone, inhalants (paint thinner, aerosol, or glue), hallucinogens, LSD, PCP, ecstasy, mushrooms, muscle relaxers, or tranquilizers (valium)?

(14) Have you ever taken an expired prescription drug?

(15) Have you ever taken a prescription drug not prescribed to you?

(c) If an applicant answers yes to any of the screening questions set forth in subsection (b), then the department shall require the applicant to undergo a seven-panel hair follicle test to be conducted by a drug testing agency designated by the department.

(d) City, county, or state law enforcement agencies that charge an individual with a drug-related offense or a theft or burglary offense shall report the individual to the department no later than thirty (30) days after the charge, providing information that includes the individual's name; date of birth; social security number, if available; and address. If the individual is a recipient of assistance under this part, then the department shall require the individual to undergo a seven-panel hair follicle test to be conducted by a drug testing agency designated by the department.

(e) The applicant may inform the drug testing agency administering the test of any prescription or over-the-counter medication the person is taking. No drug for which an applicant has a current valid prescription is a basis for denial of assistance pursuant to this part.

(f) The cost of drug testing is the responsibility of the person tested and may be deducted from the applicant's assistance benefits.

(g) If an applicant refuses to complete the screening questionnaire set forth in subsection (b) or refuses to submit to a drug test required by this section, then the applicant is ineligible to receive assistance under this part until the applicant fulfills those requirements.

(h) If an applicant tests positive for any illegal drugs, then the department shall refer the applicant to an appropriate drug treatment program. Upon proof of entry and participation in a drug treatment program, the applicant, if otherwise eligible, shall receive assistance under this part during the treatment period, but, in no event, longer than six (6) months following the positive drug test. During the six-month period, the applicant shall furnish the department with documentary proof of ongoing participation in and compliance with the drug treatment program.

(i) Refusal by an applicant who tests positive for a drug to enter a drug treatment program, or failure to complete the drug treatment program, results in the applicant being ineligible for assistance under this part for six (6) months following the positive drug test.

(j) At the conclusion of the treatment period, but, in no event, longer than six (6) months, the department shall test the applicant again using a seven-panel hair follicle test. If the applicant tests positive for the use of a drug, then the applicant is ineligible for assistance under this part for a six-month disqualification period.

(k) If an applicant tests positive for a drug in a subsequent drug test after the six-month disqualification period, then the applicant is ineligible to receive assistance under this part for one (1) year from the date of the positive drug test.

(l) Upon testing positive for a drug in a drug test conducted pursuant to this section, an applicant must submit to a seven-panel hair follicle test upon reapplication or recertification for assistance under this part, but, at a minimum of once per year in order to continue receiving assistance under this part.

(m) If a caretaker relative is deemed ineligible for assistance under this part as a result of failing a drug test conducted pursuant to this section, then the dependent child's eligibility for assistance under this part is not affected, and the department shall designate an appropriate protective payee to receive assistance under this part on behalf of the child who is under sixteen (16) years of age. In such event, a dependent

child who is sixteen (16) years of age or older shall receive the benefits directly as the payee.

(n) If an applicant makes a false statement or provides a false answer or information in response to the screening questionnaire set forth in subsection (b), then the applicant has committed perjury under § 39-16-702.

(o) All information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received by the department as part of the drug testing program established by this section are confidential, are not subject to disclosure, and must not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the administration of this section or in proceedings conducted pursuant to title 37 concerning the protection or permanency of children or in adjudicating any claims or actions arising from the administration of this section, unless the person tested provides written consent permitting disclosure.

(p) Information regarding drug test results for tests administered pursuant to this section must not be released to law enforcement authorities or used in any criminal proceeding against the applicant. Information released contrary to this section is inadmissible as evidence in a criminal proceeding.

(q) This section does not prohibit the department or a drug testing agency conducting a drug test from having access to an adult applicant's drug test information or using the information when consulting with legal counsel in connection with actions brought under or related to this section, or when the information is relevant to its defense in a civil or administrative matter.

(r) This section does not prohibit the reporting of child abuse, child sexual abuse, or neglect of child pursuant to title 37, chapter 1, part 4 or 6.

(s) The commissioner is authorized to adopt rules, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, necessary for the

administration of this section, and has rulemaking authority to promulgate any rules to carry out the requirements of any title or part of any title that the department administers and that are necessary to immediately implement this section or related titles or parts.

(t) In promulgating rules, the commissioner shall consider, at a minimum:

(1) Testing procedures established by the United States departments of health and human services and transportation;

(2) Body specimens and minimum specimen amounts that are appropriate for drug testing;

(3) Methods of analysis and procedures to ensure reliable drug testing results;

(4) Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens tested; and

(5) Retention, storage and transportation procedures to ensure reliable results of drug tests used in the administration of this section.

(u) An applicant whose drug test result is confirmed as positive in accordance with this part does not, because of that result alone, have a disability as defined under federal, state, or local disability discrimination laws.

(v) This section applies to the extent permitted by federal law or waiver. If any provision of this section or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to that end the provisions of this section are severable.

(w) As used in this section:

(1) "Caretaker relative" means the father, mother, grandfather or grandmother of any degree, brother or sister of the whole or half-blood, stepfather, stepmother, stepbrother, stepsister, aunt or uncle of any degree, first cousin, nephew or niece, the relatives by adoption within the previously named

classes of persons, and the biological relatives within the previous degrees of relationship, and the legal spouses of persons within the previously named classes of persons, even if the marriage has been terminated by death or divorce, with whom a child is living;

(2) "Chain-of-custody" means the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results;

(3) "Drug" means marijuana; cocaine; methamphetamine; amphetamine; opiates, such as morphine; and any drug added by the commissioner by rule;

(4) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered by a drug testing agency authorized to do so pursuant to this section, for the purpose of determining the presence or absence of a drug or its metabolites pursuant to regulations adopted by rule by the commissioner;

(5) "Drug testing agency" means an entity that has the required credentials as established by regulatory or certification authorities to administer tests using a person's urine, blood, specimen, or DNA that will detect and validate the presence of drugs in the person's body;

(6) "Drug treatment program" means a service provider that provides confidential, timely, and expert identification, assessment, and resolution of drug or alcohol abuse problems affecting persons;

(7) "Legal guardian" means a person or entity that has the legal authority to provide for the care, supervision, or control of a minor child as established by law or court order;

(8) "Protective payee" means a caretaker relative or a legal guardian of the child. "Protective payee" does not mean a caretaker relative or guardian who is the applicant for assistance and who tests positive for the use of a drug; and

(9) "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of drugs or drug metabolites.

SECTION 3. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2019, the public welfare requiring it.